Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
TRS Fund Administration	)	CC Docket No. 98-67
	)	
	)	

REPLY COMMENTS OF
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

The National Exchange Carrier Association, Inc. (NECA) submits these Reply Comments in the above-captioned proceeding.[1]

On April 25, 2004, NECA, as Interstate Telecommunications Relay Service (TRS) Fund Administrator, made its Annual Submission of the TRS Payment and Revenue Requirements for the July 2005—June 2006 funding period.[2] Ten parties filed comments in response to NECA's *2005 TRS Filing.* Several TRS providers objected to NECA's proposed reimbursement rate for Traditional TRS and IP Relay Service, and to the proposed VRS rate.[3] AT&T questioned the methodology chosen by NECA to estimate projected funding requirements for the 2005/2006 period. Several other parties

[1] National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2005 Through June 2006, CC Docket No. 98-67, *Public Notice*, DA 05-1175 (rel. Apr. 28, 2005).

[2] Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate* (filed April 25, 2005) (*2005 TRS Filing*).

[3] *See, e.g.*, Comments of Sprint Communications (Sprint) and Hands On Video Relay Services, Inc. (Hands On).

took the opportunity to comment on issues that are beyond the scope of the annual TRS submission.[4]

Traditional TRS/IP Rate

Cost differences between Traditional TRS and IP Relay Service have not been significant in the past. In a *Further Notice of Proposed Rulemaking* adopted in CC Docket 98-67 in June 2004, however, the Commission sought comment as to whether Traditional TRS and IP Relay services should continue to be compensated based on the same rate per minute. At that time, the Commission noted NECA collected data separately for the two services and there would be no administrative burden in determining and proposing separate per-minute compensation rates for each service.[5] Parties commenting on this issue suggested that cost differentials at the time did not warrant separate recovery mechanisms for TRS and IP Relay service minutes.[6]

The *2005 TRS Filing* explained that cost data reported by providers now indicates an approximate 13 percent differential between the cost of handling a traditional TRS minute ($1.44) and an IP minute ($1.278). Consistent with past practice, NECA nevertheless proposed a single reimbursement rate for Traditional TRS and IP Relay Service,[7] but observed in its filing that the TRS Advisory Council had decided to

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[4] *See, e.g.*, Comments of Telco Group at 2.

[5] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities Report And Order, CC Docket Nos. 90-571, 98-67 and CG 03-123, *Order On Reconsideration and Further Notice Of Proposed Rulemaking*, , 19 FCC Rcd 12475 (2004) at ¶ 233 (*June 2004 FNPRM*)**.**

[6] *See e.g.*, Comments of Sprint Corporation at 7 (filed October 18, 2004)

[7] *See* Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification

recommend to the Commission that it "seriously consider separate reimbursement rates" for traditional TRS and IP relay providers for the upcoming fund year.[8]

Parties commenting on NECA's TRS/IP rate proposal are split on whether the blended rate should be continued or whether separate rates should be used. AT&T, Ultratec, and Sprint support separate rate levels for Traditional TRS and IP Relay, while MCI, Hamilton, and Nordia argue that a blended rate should continue to apply.

NECA takes no position on whether the Commission should continue to use a blended rate for TRS/IP minutes. NECA continues to collect cost and demand data separately for the two services and would not experience any significant additional administrative burdens under a separate rate approach. Accordingly, NECA stands ready to compensate providers with either the blended rate or individual rates for the services, based on the Commission's determination as to the preferred method.

<u>Video Relay Service</u>

NECA proposed a provider reimbursement rate of $5.924 per minute for VRS.[9] NECA noted in the *2005 TRS Filing* that the proposed rate was affected to a significant extent by the cost characteristics and demand projection of a single provider. NECA accordingly provided an estimate of what the rate and funding requirement would be if that provider's data were excluded from the rate calculation.[10]

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of WorldCom, Inc., CC Docket No. 98-67, *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 7779 (2002) at ¶ 22 (*IP Declaratory Ruling & Second FNPRM).*

[8] *2005 TRS Filing* at 21.

[9] *Id.* at 16.

[10] *Id.* at n. 32.

Commenting parties were virtually unanimous in their objections to the use of this VRS provider's data in the rate calculation.[11] Hands On and CSD propose alternative methodologies for calculation of the VRS rate for the 2005-2006 funding year that lessen the impact the lowest-cost provider has on the rate. Sprint and Hamilton do not oppose the proposed rate level, but suggest the Commission will have to revisit the provider reimbursement rate once it has resolved issues related to speed of answer and interoperability.[12]

Hands On suggests that one alternative would be to eliminate providers whose costs are more than one standard deviation above or below the mean (*i.e.,* the highest and the lowest cost providers) and calculate a weighted average rate from the remaining providers' data. NECA has determined that exclusion of both the high and low cost providers' data in the manner suggested by Hands On would produce a VRS rate of $6.824 per minute with a corresponding VRS funding requirement of $266.8 Million, approximately $35 Million higher than the filed amount.

<u>Funding Requirement</u>

Hamilton concurs with NECA's assessment that the decline in interstate revenues and significant increase in demand for IP Relay and VRS warrant an increase in the overall size of the fund. AT&T argues, however, that NECA's demand projection

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[11] *See e.g.,* TDI at 2, Hands On at 4, CSD at 2.

[12] The Commission sought comment on the issue of speed of answer in its *June 2004 FNPRM* (at ¶ 246) and on the issue of interoperability in response to the *Petition for Declaratory Ruling on Interoperability* filed on February 15, 2005 by the California Coalition of Agencies Serving the Deaf and Hard of Hearing in CC Docket No. 98-67 and CG Docket No. 03-123.

methodology and use of a safety margin of 10% overstate the projected funding requirement by as much as $80 Million.

AT&T principally objects to NECA's use of a four-month historical period to project demand for the year, and argues that a twelve-month historical base (from April 2004 through March 2005) would produce a more reasonable estimate. NECA explained in its filing that while it has historically used a methodology similar to the one AT&T suggests in developing forecasts for Traditional TRS minutes,[13] the Commission's decision to expand Traditional TRS capability by making captioned telephone voice carry over (VCO) minutes eligible for reimbursement[14] opens TRS to an entirely new segment of the population who typically do not communicate via text telephone or sign language. NECA sought to capture these effects by using data from periods that reflect demand stimulation effects associated with captioned telephone VCO service. If, on the other hand, NECA were to use the forecast methodology that AT&T suggests, a decrease in overall usage would be projected – exactly the opposite of what is expected to occur. NECA believes that its shorter forecast period that includes initial impacts of captioned telephone VCO minutes is a more likely result for the test period than AT&T's methodology.

Use of the twelve-month period suggested by AT&T would also distort IP Relay projections. AT&T's analysis includes data for the months of April and May 2004, both of which contain what appear to be anomalous reductions in IP Relay minutes over prior

[13] "In past years, NECA calculated a percentage growth rate for traditional TRS based on year over year increases or decreases in minutes." *See 2005 TRS Filing* at 10.

[14] Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with hearing and speech Disabilities, CC Docket No. 98-67, *Declaratory Ruling*, 18 FCC Rcd 1621 (2003) (finding that captioned telephone VCO service is a form of TRS eligible for compensation from the interstate TRS fund).

month's reported minutes.[15] If data from these two non-representative months are included, the resulting monthly growth rate would be significantly below that of the fifteen-month period leading up to April 2004 (where an average monthly increase of 260,419 minutes occurred) and the ten-month period subsequent to April 2004 (during which time minutes grew at an average monthly increase of 172,459). NECA's projected growth of 210,364 minutes, based on a four-month average that excludes these two months, is far more closely aligned with the average monthly growth this service has experienced since May 2004 than does the 88,118 minutes that result using AT&T's analysis.

Video Relay Service is perhaps the most difficult relay service to forecast. VRS permits hearing impaired subscribers to utilize sign language to communicate, rather than relying on typing skills. NECA has seen usage for VRS skyrocket in a very short period of time. In May 2004, VRS providers reported 733,040 minutes. In August 2004, three months later, usage exceeded the 1 million minutes per month threshold for the first time. Six months later, in January 2005, minutes exceeded 1.6 million a month. NECA anticipates that providers will be reporting over 2 million minutes a month as early as May 2005.

The VRS minute projection contained in NECA's Annual Submission for 2004-2005 was developed using a methodology that relied on a longer data period than the four months used in the *2005 TRS Filing*. Based on data from August 2003 through March 2004, NECA estimated last year that VRS minutes would grow on average by 57,726 minutes each month, leading to a projected usage level of 1.4 million minutes by March

[15] The timing of the low minute growth for April and May 2004 appears to coincide with implementation of measures to control fraudulent calls from international locations.

2005. This level was exceeded in December 2004, and every month since then, with March 2005 actual minutes exceeding 1.8 million, nearly thirty percent higher than anticipated.

AT&T suggests that an average monthly growth of approximately 92 thousand minutes is appropriate for estimating VRS funding requirement for the 2005-2006 funding year. A review of data for the twelve month period April 2004 through March 2005 indicates that the initial two months (April and May 2004) of AT&T's time series experienced far lower growth than any of the ensuing months.[16] If those two months are excluded from AT&T's series, the average monthly growth estimate increases to over 108 thousand minutes per month. If NECA had utilized the same methodology as last year (*i.e.*, August 2004 through March 2005), which as discussed above produced a projection that was significantly understated, the monthly growth estimate would also have been approximately 108 thousand minutes per month.

NECA's four month projection utilized data from October 2004 through January 2005. If additional data for February and March 2005 were included and the projection were expanded to six months, the average monthly growth would be over 110 thousand minutes per month. If data from the most recent four month period (December 2004 through March 2005) were to be used, the monthly growth estimate would exceed 130 thousand minutes.

[16] NECA compared the average daily minutes growth for the first six months of AT&T's twelve month time series to the average daily minute growth for the second six months and found the average growth for the second six months to be approximately 30 percent higher than the average for the first six months (3,441 minutes per month versus 2,624 minutes per month).

In other words, NECA's projection methods, which combine historical results from the most relevant recent periods with working knowledge of likely changes in the relay service marketplace, produce a far more reasonable TRS usage projection than the method AT&T proposes. NECA's estimates should be used to determine funding requirements for the various relay service programs for the upcoming funding year.

AT&T also objects to NECA's inclusion of a 10% safety margin in its filing. NECA has used this safety margin since its first TRS filing, which the Commission approved in 1994.[17] Every subsequent filing has maintained the same 10 percent margin to insure smooth, efficient operation of the fund and to minimize the need for subsequent fund size revisions (and to avoid the need for revising telecommunications service provider assessments throughout the course of the funding year).

As AT&T notes, unanticipated growth in funding requirements did require an additional assessment in the 2003-2004 funding year.[18] In the current funding period, demand has continued to grow as discussed above, and the Commission in a December 2004 increased payments to providers retroactively to the beginning of the funding year. The ten percent safety margin in these instances obviated the need for the administrator to bill and collect additional funds from over 4,300 contributors.

While Universal Service funding requires contributors to submit monthly payments based on a quarterly contribution factor, the TRS and number administration funding mechanisms were created with an annual funding requirement with the largest contributors (i.e., those having an annual contribution exceeding $1,200) having the

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[17] In the Matter of Telecommunications Relay Service, and the Americans with Disabilities Act of 1990, CC Docket 90-571, *Order,* 9 FCC Rcd 1783 (1994).

[18] AT&T at 6.

option of paying one-twelfth each month. In each of the annual funding mechanisms, the administrator has been permitted to include a contingency in the annual funding requirement.[19]

It is unclear what if any impact a Commission decision on open items such as speed of answer or interoperability might have on VRS, a service that is already growing faster than anticipated. Historically, the contingency or safety margin for TRS has been 10 percent; NECA believes that a safety margin at some level continues to be warranted.

Other Issues Raised in Comments

Several parties raise issues in their comments that are not germane to the issues of the appropriate level of the TRS provider compensation rates, TRS funding requirement and contribution factor for the 2005-2006 funding year. AT&T re-raises the issue of recovery of ILEC TRS Fund contributions via access charges, despite the Commission's conclusion in an earlier order that "the review of the contribution and fund size proposal is not the appropriate vehicle for addressing th[e] issues". Hamilton, MCI, and AT&T suggest that the Commission give consideration to the Multistate Average Rate Structure (MARS) Plan submitted in October 2004 by Hamilton. While the Commission may determine that such an approach is warranted in future years for services that have state rate levels (e.g., Traditional TRS and Speech-to-Speech), the request is already under consideration by the Commission and is therefore outside the scope of this proceeding. Finally, comments filed by the Telco Group that ask the Commission to act on the Telco

[19] Welch & Company, LLP., the current NANPA B&C agent has a filing before the Commission for the upcoming funding year that contains a contingency equal to approximately 14.5 percent of the annual funding requirement. *See* North American Numbering Plan Administration, CC Docket 92-237, *Contribution Factor and Fund Size for July 2005 through June 2006* (filed May 4, 2005).

Group's previously-filed Petition for Declaratory Ruling or in the alternative, Petition for Waiver are similarly misplaced.[20]

Conclusion

NECA's calculations of TRS payments and revenue requirements for the July 2005 - June 2006 funding period were made in accordance with current rules and procedures. Should the Commission find, however, that the proposed TRS reimbursement rates be calculated by some means other than proposed in NECA's Annual TRS submission or that a different fund size projection technique is warranted, NECA will promptly submit revised results in accordance with the Commission's further direction.

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[20] Telco Group at 2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of NECA's Reply was served this 25th day of May 2005, by electronic filing, first class mail and electronic mail to the persons listed below.

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